

COUNCIL MINUTES
TIGARD CITY COUNCIL MEETING
July 22, 2003

Mayor Griffith called the meeting to order at 6:30 p.m.

Council Present: Mayor Griffith; Councilors Dirksen, Moore, Sherwood, and Wilson

- STUDY SESSION

- > UPDATE – WASHINGTON COUNTY EFFORTS – WEST NILE VIRUS

Stormwater/Wasterwater Supervisor Eric Hand reviewed the proactive approach (education, larvae control) the Public Works Department is taking in coordination with Washington County Health Department and Multnomah County Vector & Nuisance Control Department concerning the West Nile Virus response plan. Mr. Hand also distributed a document: West Nile Virus Fact Sheet and Frequently Asked Questions.

- > ADMINISTRATIVE ITEMS

The following items were reviewed with Council by City Manager Bill Monahan:

- Item 3.4 c. to be removed from the Consent Agenda for the Award of a Contract to Great Western Sweeping, Inc.; the current contract was extended for 30 days to resolve issues on this item.
 - New Park and Recreation Advisory Board (PRAB) will be formed tonight if Council approves the proposed resolution (Item 3.2). The following Board members plan to attend the meeting: Carl Switzer, Shelley Richards, Mike Freudenthal, and Darrin Marks.
 - A letter from Washington County was distributed to the Council inviting them to attend activities planned for National Night Out at Metzger Park. The Tigard Police Department is also planning activities throughout the Community. Haggen's grocery store is supplying free party packs to neighborhoods for local events.
 - A Council packet was distributed for the July 29, 2003, Special City Council meeting with the Washington County Board of Commissioners.

- EXECUTIVE SESSION: Not held

Study Session concluded at 7:18 p.m.

1. BUSINESS MEETING
 - 1.1 Mayor Griffith called the meeting to order at 7:32 p.m.
 - 1.2 Roll Call - Mayor Griffith; Councilors Dirksen, Moore, Sherwood, and Wilson
 - 1.3 Pledge of Allegiance
 - 1.4 Council Communications & Liaison Reports: Councilor Dirksen advised that the Transportation Financing Strategies Task Force will soon forward a recommendation on a proposed Street Maintenance Fee.
 - 1.5 Call to Council and Staff for Non-Agenda Items: No non agenda items were added; however, staff recommended that Consent Agenda Item 3.4c. be removed from the agenda. Item 3.4c will be rescheduled.
2. VISITOR'S AGENDA: No visitors
3. CONSENT AGENDA: Motion by Councilor Dirksen, seconded by Councilor Wilson to approve the Consent Agenda, with Item 3.4c removed:
 - 3.1 Approve Council Minutes for June 17, 2003 Meeting
 - 3.2 Appoint Seven New Members, an Alternate, and an Ex-Officio Member to the Park and Recreation Advisory Board – Resolution No. 03 - 28
 - 3.3 Approve the Willamette River Water Coalition Intergovernmental Agreement
 - 3.4 Local Contract Review Board:
 - a. Award Contract for Crack Sealing of 92,250 Linear Feet of Cracks to Ashwood Construction, Inc.
 - b. Award Contract for Engineering/Security Services – Water System Vulnerability Assessment to CH2M Hill/IDC
 - c. ~~Award Contract for Street Sweeping to Great Western Sweeping, Inc.~~
 - 3.5 Approve the Dedication of a Portion of the Library Property along the Hall Boulevard Frontage to the Oregon Department of Transportation as Required by the Conditions of Approval for the New Library Project and Authorize the City Manager to Sign the Documents

The motion was approved by a unanimous vote of Council:

Mayor Griffith	-	Yes
Councilor Dirksen	-	Yes
Councilor Moore	-	Yes
Councilor Sherwood	-	Yes
Councilor Wilson	-	Yes

The Mayor acknowledged and welcomed the newly appointed Park and Recreation Advisory Board members in attendance:

- Carl Switzer
- Shelley Richards
- Mike Freudenthal
- Darrin Marks

4. DISCUSSION WITH STATE SENATOR GINNY BURDICK AND STATE REPRESENTATIVE MAX WILLIAMS

Senator Burdick discussed status of several bills at the state legislature with the Council. Representative Williams was unable to attend the meeting.

A summary of comments made are as follows:

- Approaching a breakthrough on budget and revenue, which include budget enhancements; however, no tax reform proposals expected.
- Legislature is looking at taking away from local governments the cigarette and liquor taxes collected that has been shared.
- More likely to see proposal on tax reform from an outside consortium, rather than from the legislature.
- Tigard/Tualatin Schools “will get through” with funding proposed for education; however, the District will not be able to restore any programs
- SB 444, 445, 446 regarding public safety bargaining proposals were discussed. Senator Burdick said two of these bills are “dead,” and she was unsure of the status of the third bill.
- The proposed bill for the hotel/motel sales tax is now “hung up now on pre-emption.”

5. CONTINUATION OF QUASI-JUDICIAL PUBLIC HEARING FROM JULY 8, 2003 – CONSIDER THE APPEAL OF THE BRETTON WOODS SUBDIVISION (SUB2003-00001/PDR200300001/ VAR2003-00006/VAR2003-00007)

ITEM ON APPEAL: On May 28, 2003, the Planning Commission approved a request for a 10-lot Subdivision and Planned Development on 2.34 acres. The lots are to be developed with detached single-family homes. Lot sizes within the development are between 5,500 and 6,879 square feet. The applicant also requested approval for an Adjustment to the 200-foot cul-de-sac length standard,

and an Adjustment to the street improvement requirements of the Tigard Development Code Chapter 18.810. The Adjustment would allow the applicant to construct a curb-tight sidewalk as opposed to a sidewalk separated by a planter strip along SW 108th Avenue. On June 11, 2003 an appeal was filed pertaining to issues raised related to tree safety and water run-off through adjacent property caused by the development. **LOCATION:** 16455 SW 108th Avenue; WCTM 2S115AA, Tax Lots 1301 and 1400. **ZONE:** R-4.5: Low-Density Residential District. **APPLICABLE REVIEW CRITERIA:** Community Development Code Chapters 18.350, 18.390, 18.430, 18.790 and 18.810.100.

- a. Mayor Griffith continued the Public Hearing from the July 8, 2003, Council meeting.
- b. Declarations or Challenges – Mayor Griffith read the following.
 - *Do any members of Council wish to report any ex parte contact or information gained outside the hearing, including any site visits? (No ex parte contacts reported.)*
 - *Have all members familiarized themselves with the application? (Council members indicated familiarity.)*
 - *Are there any challenges from the audience pertaining to the Council's jurisdiction to hear this matter or is there a challenge on the participation of any member of the Council? (There were no challenges.)*
- c. Public Testimony

The hearing was opened on July 8, 2003. The proponents of the appeal and testimony from the City Forester were heard by the City Council. At this time, the applicants will have an opportunity to testify and rebuttal from the proponents and applicants will be heard.

The Mayor read the following:

- *For all those wishing to testify, please be aware that failure to raise an issue accompanied by statements or evidence sufficient to afford the Council and parties an opportunity to respond to the issue will preclude an appeal to the Land Use Board of Appeals on this issue. Testimony and evidence must be directed toward the criteria described by staff or other criteria in the plan or land use regulation which you believe apply to the decision.*

- Applicants

- > Matt Sprague, Applicant's Representative, 9600 SW Oak Street, Suite 230, Portland, OR 97223, reviewed the background of the work done for the proposed development including plans to preserve the natural resources. He referred to a neighborhood meeting to discuss the proposed development. After that meeting, Mr. Sprague advised he redesigned the project to address some of the neighbors' concerns. He referred to continuing discussions with the neighbors with regard to preservation of trees. He mentioned that he talked with Mr. Ken Patton about what could be done to avoid silting of his pond; although there is silt that is coming from another property (not from the Bretton Woods property). While Mr. Sprague advised he did not promise a rock-lined drainage way to protect Mr. Patton's property from silting, he said he did promise to help find a solution to the silting problem.

Mr. Sprague reviewed storm drainage for the area and described how storm drainage would be handled. No stormwater detention is required for this property; creek beds are adequate to handle a 25-year flow event.

Mr. Sprague reviewed how they planned to protect the trees during construction and summarized the provisions in the tree protection plan. He advised he has not seen an arborist report from the appellants. Mr. Sprague referred to a statement made by the appellant's legal counsel, Mr. Dan Kearns, about how the trees will die; a statement that Mr. Sprague said could not be proven. He again referred to the applicant's tree protection plan, which was designed to preserve the natural resources.

He said the neighbors are appealing because of their perception of decreased safety. He again referred to the tree protection plan.

Mr. Sprague said he would continue to work with Mr. Patton to resolve runoff issues.

- > Mr. Walter Knapp, 7615 SW Dunsmuir Lane, Beaverton, OR 97007 and Mr. Peter Torres, 8325 SW 42nd Avenue, Portland, OR 97219, arborists for the applicants presented testimony to the Council.

Mr. Torres reviewed information for tree protection, including the critical root zone, which was mistakenly represented by the appellants. He referred to several sections in the technical guide for *Trees and*

Development published by the International Society of Arboriculture (ISA). (Copies of reference materials submitted by Mr. Torres included an excerpt from the City Code for Lake Oswego, and excerpt of the City Code for Portland, and the ISA *Trees and Development* technical guide to preservation of trees during land development.)

Mr. Knapp testified on the difference between guidelines and standards insofar as the ISA outlined guidelines only and has no official sanction with regard to setting standards.

Mr. Knapp explained how they attempted to plan for the best tree protection available, including:

1. Locate the road as far away as possible.
2. Build up, rather than down (no intention to cut roots or remove soil)
3. Use a geotech fabric base to facilitate a permeable surface.

He also described the type of rock that would be used and how ventilation to the tree roots would be provided. He said he expected that they would be able to maintain a healthy environment for trees.

Mr. Knapp described the trees on the site and the tree protection measures that would be incorporated during construction.

- > Mr. Mark Padgett, 12974 SW Princeton Lane, Tigard, OR testified as the Chairman of the Planning Commission to clarify two points:
1. Issue of “shared trees” – the ownership of the trees is not a land use issue and could not be considered by the Planning Commission. Chairman Padgett advised that the Planning Commission vote was unanimous.
 2. The Planning Commission considers tree preservation is important. There must be a balance between development and environment interests. The Commission decided the applicant presented a good plan for tree preservation.

Meeting recessed at 9:12 p.m.

Meeting reconvened at 9:23 p.m.

Rebuttal – Appellants

- > Mr. Dan Kearns, attorney representing the appellants, 910 Oregon National Building, 610 SW Alder Street, Portland, OR 97205 submitted two newspaper articles for the record and commented that these should have been mentioned as ex parte information. Mr. Kearns also submitted a June 30, 2003, letter from Jay Larson of Northwest Arbo-Culture, Inc. Mr. Kearns' rebuttal points included the following:
 - This would be a good site for the proposed development if there were no trees on the property.
 - Some of the trees have shared ownership; therefore, the developer cannot take them down.
 - Referred to TMC 18.790.030 and said the developer was proposing to take out 21% of the trees thereby narrowly avoiding some to this section's mitigation (triggered if 25% of the trees are removed) requirements. However some of the remaining trees will be placed in great jeopardy.
 - The applicant has the burden of proof that their plan is adequate.
 - Referred to City Forester Matt Stine's testimony and his concerns about the developer's proposal.
 - The tree protection plan presented by the developer is inadequate and referred to the ISA recommendations.
 - Referred to the City's Tree Protection Manual.
 - Objected to the characterization of the appellants' concerns as "perception."
 - Advised of impacts to trees with the road construction planned.
 - If the trees should fall, some homes could be hit.
 - Noted concerns about root disturbance and the removal of the trees' anchor systems.
 - Would like to see a financial guarantee required as well as something in writing about "wind throw."

During discussion with Mr. Kearns, Councilor Moore commented that the City's Tree Protection Manual applied to City-owned property. For property to be developed, a Tree Protection Plan must be submitted by the developer.

- > Mr. Ken Patton, 16459 SW 108th Avenue, Tigard, OR presented rebuttal testimony with regard to drainage on his property. When adjacent property was developed in 1986, the developer was required to direct water runoff so that it would bypass his property. A 10-inch

pipe is clogged. Mr. Patton relayed his concerns about potential flooding and also silting of the pond located on his property. He would like the developer to be required, in writing, to unclog the 10-inch pipe.

City of Tigard Project Engineer Brian Rager commented on the natural drainageway; the fact that no onsite retention is required of the developer by Clean Water Services (because of proximity to the Tualatin River and additional flow into the drainageway will not cause problems). With regard to the 10-inch pipe, it was noted that even with a 25-year storm event, the water will stay within the existing channel and will not flood property. The developer must deal with erosion.

Applicant Rebuttal

- > Matt Sprague, 9600 SW Oak Street, Suite 230, Portland, OR referred to the appellants' attorneys comments that trees would fall. Mr. Sprague said the attorney could not prove that trees would fall. Mr. Sprague's comments included the following;
 - No onsite water detention is required.
 - Described why the road is proposed to be located as planned. There was discussion on the road location among the Council, staff and applicant.

Councilor Dirksen commented that he would like to see some written assurances that water runoff issues would be worked out to protect Mr. Patton's property. Councilor Wilson noted there is an obligation of the developer to keep silt off of Mr. Patton's property and that there would be additional water runoff, but in an amount that should not cause a problem.

Mr. Sprague noted the erosion control that would be required during construction including a water quality swale. He said there is potential for runoff on two adjacent properties. Mr. Sprague noted the intention to provide an infiltration barrier to prevent silt from depositing into Mr. Patton's pond.

Project Engineer Rager said the concern with the pond isn't necessarily related to erosion; however, additional flow could stir up sediment and there are no standards that say that the developer needs to prevent this "stirring up."

City Attorney Firestone advised that increased flow is not an issue.

Mr. Knapp noted the requirements to preserve and protect trees have been met. Mr. Torres read from a memo written by City Forester Matt Stine that indicated he was less worried about impacts of this development with the proposed design. The appellants did not submit an arborist report for preview. Again Mr. Torres referred to the ISA guidelines (not standards) and the need to exercise professional judgment.

Councilor Dirksen discussed with City Attorney Firestone the conditions of approval that could be required including a potential bond relating to guarantees of the developer.

- d. Associate Planner Kilby recommended that the Council approve the proposed development as approved by the Tigard Planning Commission.
- e. Mayor Griffith closed the public hearing.
- f. Discussion followed. City Attorney Firestone advised the Code requires a plan. To impose a condition on the developer to submit a bond, the Council would have to find that the tree protection plan is inadequate. The Council has no express authority to require a bond.

Councilor Wilson said he thought the tree protection plan provided by the developers was adequate. The Code does not give the City authority to impose additional requirements; the authority rests with the developer's arborist. The Code has been followed and now the City must make sure the developer follows the plan presented and to rely on professionals to do their job. Councilor Wilson advised he would vote against the appeal.

Councilor Moore referred to the developer's testimony regarding the plans to protect the trees and that the drainage would be adequately provided for. He said the developer's plan is acceptable.

Councilor Sherwood said there was no evidence that the applicants would not do a good job. City Attorney Firestone confirmed that the burden of proof that the Code requirements have been satisfied rests with the applicant. Councilor Sherwood reiterated that there has been no evidence showing that the applicants are not in compliance.

Councilor Dirksen advised he was distressed that the City could not enforce additional requirements and was concerned about storm water flow. He noted there were no guarantees offered; therefore, he would vote in favor of the appeal.

- g. Council consideration: Motion by Councilor Wilson, seconded by Councilor Sherwood, to adopt Resolution No. 03-29.

RESOLUTION NO. 03-29 – A RESOLUTION UPHOLDING THE PLANNING COMMISSION’S FINAL ORDER APPROVING BRETTON WOODS SUBDIVISION (SUBDIVISION [SUB] 2003-00001/PLANNED DEVELOPMENT REVIEW [PDR] 2003-00001/ZONE CHANGE (ZON) 2003-00001/ADJUGSTMENT [VAR] 2003-00006/ADJUSTMENT [VAR] 2003-00007)

The motion was approved by a majority vote of Council present:

Mayor Griffith	-	Yes
Councilor Dirksen	-	No
Councilor Moore	-	Yes
Councilor Sherwood	-	Yes
Councilor Wilson	-	Yes

- h. Council will consider a final order, with findings, at its August 12, 2003, meeting.

6. PUBLIC HEARING (QUASI-JUDICIAL) – ZONE CHANGE ANNEXATION (ZCA) 2003-00001 BRETTON WOODS SUBDIVISION ANNEXATION

REQUEST: The applicant is requesting to annex one (1) parcel of land containing 2.34 acres into the City of Tigard. **LOCATION:** 16455 SW 108th Avenue; WCTM 2S115AA, Tax Lot 1400. **ZONE:** R-4.5: Low-Density Residential District. The R-4.5 zoning district is designed to accommodate detached single-family homes with or without accessory residential units at a minimum lot size of 7,500 square feet. Duplexes and attached single-family units are permitted conditionally. Some civic and institutional uses are also permitted conditionally. **APPLICABLE REVIEW CRITERIA:** The approval standards for annexations are set out in Community Development Code Chapters 18.320 and 18.390, Comprehensive Plan Policies 2 and 10; ORS Chapter 222; and Metro Code Chapter 3.09.

- a. Mayor Griffith opened the public hearing.
- b. The Mayor read through the following:

- *Do any members of Council wish to report any ex parte contact or information gained outside the hearing, including any site visits? (None reported.)*
 - *Have all members familiarized themselves with the application? (All Council members indicated they were familiar with the application)*
 - *Are there any challenges from the audience pertaining to the Council's jurisdiction to hear this matter or is there a challenge on the participation of any member of the Council? (There were no challenges.*
- c. Assistant Planner Kilby presented the staff report and advised staff recommended the Council approved the proposed ordinance
- d. Public Testimony

The Mayor read the following:

- *For all those wishing to testify, please be aware that failure to raise an issue accompanied by statements or evidence sufficient to afford the Council and parties an opportunity to respond to the issue will preclude an appeal to the Land Use Board of Appeals on this issue. Testimony and evidence must be directed toward the criteria described by staff or other criteria in the plan or land use regulation which you believe apply to the decision.*

Proponents:

- Applicant's representative Matt Sprague, 9600 SW Oak Street, Suite 230, Portland, OR testified that the applicant concurs with the staff report.
- e. Mayor Griffith closed the public hearing.
- f. Council Consideration: Motion by Councilor Sherwood, seconded by Councilor Dirksen, to adopt Ordinance No. 03-06.

The motion was approved by a unanimous vote of Council present:

Mayor Griffith	-	Yes
Councilor Dirksen	-	Yes
Councilor Moore	-	Yes
Councilor Sherwood	-	Yes
Councilor Wilson	-	Yes

7. CONSIDER AFFORDABLE HOUSING FEE ASSISTANCE REQUEST

Associate Planner Roberts presented the staff report and Henry Alvarez, representing Washington County, reviewed the improvements made to Bonita Villa. The project meets City guidelines with respect to eligible activities, zoning, time limits, and Enhanced Safety participation. It does not meet guidelines with respect to the dollar amount requested. The guidelines were set to allow Council flexibility in its application to specific projects. The staff report outlined the reasons why staff recommended that Council approve the request.

Councilor Sherwood, who sits on the Washington County Housing Advisory Board, advised she would abstain from voting on this request.

Motion by Councilor Wilson, seconded by Councilor Dirksen, to approve the request from Washington County Housing Services for fee assistance and authorize up to \$10,000 in fee reimbursement, with the actual amount to be determined based on the eventual fees and charges assessed.

The motion was approved by a majority vote of Council present:

Mayor Griffith	-	Yes
Councilor Dirksen	-	Yes
Councilor Moore	-	Yes
Councilor Sherwood	-	Abstained
Councilor Wilson	-	Yes

8. PUBLIC HEARING (INFORMATIONAL) TO CONSIDER ESTABLISHING SANITARY SEWER REIMBURSEMENT DISTRICT NO. 27 – PORTIONS OF SW MURDOCK STREET, 100TH AVENUE)

- a. Mayor Griffith opened the public hearing.
- b. Project Engineer Greg Berry presented the staff report, which is on file with the City Recorder.

There was discussion among City Engineer Gus Duenas and Council members about the Reimbursement District Program. On August 12, District Nos. 28 and 29 will be reviewed with regard to status of bids received and information about how to prioritize funding and construction of District Nos. 27, 28, and 29. None of these districts have been formed. In addition there was discussion about some amendments to the program suggested by City Engineer Duenas at the July 15, 2003, workshop. The Council will consider amending the Sewer Reimbursement District Program at a later date.

c. Public Testimony

- Daniel Garner, 15065 SW 98th Avenue, Tigard, testified that he has lived at this location for 13 years. He disagreed that the neighborhood meeting forming this district was “supportive” and that he would characterize the mood of those present as “hostile.” He noted he was “thunderstruck” by the amount he would have to pay if he connected to the sewer. He asked the Council consider the timing (economic times) and to prioritize the formation of the sewer districts to those area that need sewer. He noted that Peppertree residents were not included in the district and that the costs would be reduced if they were added. City Engineer Duenas noted the reasons why the Peppertree area was not included in the District, including the fact that these homes are relatively new.
- Jim Corliss, 9750 SW Inez, Tigard OR advised that he owns undeveloped property at 100th and Murdock and that he supports sewer installation. He would like to see alteration of the provisions so that one must hook up to the sewer within three years after development occurs on the property. City Engineer Duenas advised that the proposed amendments (to be considered by Council at a later date) would address this matter. Mr. Corliss also referred to storm drainage problems in the area.
- Steve Davidson, testified that he was concerned about repair or replacement of existing septic systems should sewer be available. He also commented on the financial issues for property owners.

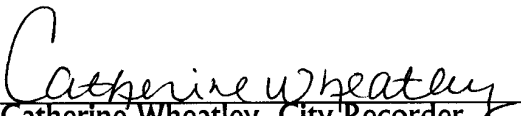
d. Project Engineer Berry advised staff recommended that the Council approve formation of Reimbursement District No. 27.

e. Mayor Griffith closed the pubic hearing.

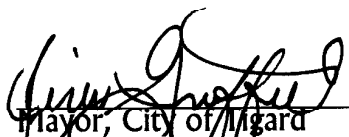
f. Council Discussion: Three sewer reimbursement districts are ready to be formed - only two can be funded this year. It was decided that the Council would consider whether to form each of these districts at its August 12 meeting and decide which two will be funded this year and which one will be funded next fiscal year (after July 1, 2004).

9. COUNCIL LIAISON REPORTS: Councilor Dirksen advised that the Transportation Financing Strategies Task Force had reached a consensus on the street maintenance fee and would report its findings to Council next month.

10. NON AGENDA ITEMS: None
11. EXECUTIVE SESSION: Not held
12. ADJOURNMENT: 11:22 p.m.


Catherine Wheatley, City Recorder

Attest:


Mayor, City of Tigard
Date: August 26, 2003

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